

REMARKS

Claims 1-6 and 21-34 are pending in this application, claims 7-20 are canceled and new claims 21-34 being added by this amendment. Reconsideration and allowance of the application is respectfully requested.

Claim Rejections – 35 U.S.C §102

Claims 7, 9, 12, 13, 16 and 18 are rejected under 35 U.S.C §102(e) as being anticipated by Helander (U.S. Patent 6,728,237). By this Amendment, claims 7-20 have been canceled; thus the rejection is now moot.

Claim Rejections – 35 U.S.C §103

Claims 1, 4, 8, 10, 17 and 19 are rejected under 35 U.S.C §103(a) as being unpatentable over Helander. This rejection is respectfully traversed.

Claims 8, 10, 17 and 19 have been cancelled, the rejection as pertaining to these claims is now moot.

Applicants submit that Helander fails to disclose a method of receiving cell load information in a wireless communication system, comprising, inter alia, receiving the cell load information at a first reporting periodicity, if the cell is determined to be in a low cell loading state, and receiving the cell load information at a second reporting periodicity higher than the first reporting periodicity, if the cell is determined to be in a high cell loading state; as recited in claim 1, and as somewhat similarly recited in claim 4.

The Examiner alleges that:

“[i]t would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the first embodiment of Helander such that the load information is received at a higher rate with a higher load in order to provide more up-to-date information as suggested by Helander (see column 10, lines 4-12)”.

Claim 1 does not recite that load information is received at a higher rate with a higher load. Claim 1 recites that the reporting periodicity changes based on a

determination of the cell loading state. Applicants have read the entire passage in Helander as indicated by the Examiner and fail to see how or where 'first and second periodicities' is taught. Col. 10, lines 4-12 of Helander merely indicates that more information is sent to the first processing means if there is a higher load. In other words, the passage relied on by the examiner suggests nothing about changing reporting periodicities based on cell load determination, this has been read into Helander by the Examiner with no supporting evidential proof.

Helander piggy-backs load status information on payload messages when the system is "heavily loaded" (col. 9, lines 15-25), but does nothing with changing the actual reporting periodicity based on cell loading. The piggy-backing is for avoiding uneven load distribution, yet piggy-backing is also done for low load situations, e.g., see column 9, lines 10-14 . . . "the following paragraphs may also be applied when the load situation in the system is low." Helander thus makes no connection between changing the rate of a reporting periodicity (increasing it) based on an actual determination of cell loading states changing from low to high. Helander just piggy backs load status information on payload messages in either high or low loading situations. This is not what is recited in claims 1 or 4. Accordingly, withdrawal of the rejection is kindly requested

Claims 2, 5 and 11 are rejected under 35 U.S.C § 103(a) as being unpatentable over Helander in view of Ahn (U.S. Patent Application Publication 2002/0022487 A2). This rejection is respectfully traversed.

By this Amendment, claim 11 has been canceled; thus the rejection is now moot as to claim 11. Ahn is limited to its teachings and does not teach or suggest the relationship between reporting periodicity and cell loading state as recited in claims 1 and 4. Claims 2 and 5 are thus allowable by virtue of their dependence on allowed claims 1 and 4.

Claims 3, 6, 15 and 20 are rejected under 35 U.S.C § 103(a) as being unpatentable over Helander in view of what is well known in the art. This rejection is respectfully traversed.

By this Amendment, claims 15 and 20 are canceled; thus the rejection is now moot as to these claims. The Examiner admits that Helander does not disclose

employing UMTS. Yet, the Examiner alleges that “universal mobile telephone service was well known to a person of ordinary skill in the art at the time of the invention.” Applicants submit that relying on common knowledge or common sense of a person of ordinary skill in the art, without any specific hint or suggestion of this in a particular reference, is not a proper standard for reaching a conclusion of obviousness. See In re Sang Lee, 61 USPQ2d 1430 (Fed Cir. 2002). If the Examiner is relying on personal knowledge to support a finding of what is known in the art, Applicants submit that the Examiner should provide an affidavit or declaration setting forth specific factual statements and explanations to support the findings. See 37 C.F.R. §1.104(d)(2) and MPEP §2114.03. Accordingly, Applicants respectfully challenge the Examiner’s alleged motivation, and request the Examiner to withdraw the rejection or to provide an affidavit or declaration as set forth above, if the rejection is to be maintained.

Accordingly, Applicants submit that claims 3 and 6 are allowable over the prior art at least for the reason that the Examiner has failed to make a proper prima facie case of obviousness. Withdrawal of the rejection is respectfully requested.

Claim 14 is rejected under 35 U.S.C §103(a) as unpatentable over Helander in view of Applicants’ Admission of Prior Art (AAPA). By this Amendment, claim 14 has been canceled; thus the rejection is now moot as to claim 14.

NEW CLAIMS

New claims 21-34 have been added in an effort to provide further protection for Applicants invention. Claims 21-30 recite various threshold criteria used for cell loading determination so as to apply one of the dual reporting periodicities. Claims 31-34 recite an example threshold criteria for reporting cell loading information at one of two different periodic intervals, based on a comparison of cell loading to the specified threshold criteria. These claims are allowable at least for the features recited therein, and/or for their dependence on an allowable claim 1 or 4.

CONCLUSION

Accordingly, in view of the above remarks, reconsideration of the rejections and allowance of each of claims 1-6 and 21-34 in connection with the present application is earnestly solicited.

Pursuant to 37 C.F.R. § 1.17 and § 1.136(a), Applicants respectfully petition for a one (1) month extension of time for filing a response in connection with the present application, and the required fee of \$120.00 is attached.

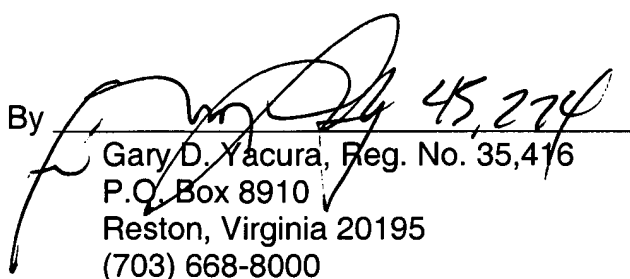
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gary D. Yacura at the telephone number of the undersigned below.

In the event this Response does not place the present application in condition for allowance, applicant requests the Examiner to contact the undersigned at (703) 668-8000 to schedule a personal interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17; particularly, extension of time fees.

Respectfully submitted,

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